

UNITED STATES COURT OF APPEALS

OCT 24 2007

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

AMADOU LAMINE DIOUF, individually
and on behalf of all others similarly
situated; et al.,

Plaintiffs - Appellants,

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security; et al.,

Defendants - Appellees.

No. 07-56454

D.C. No. CV-07-03977-TJH
Central District of California,
Los Angeles

ORDER

Before: B. FLETCHER, IKUTA and N.R. SMITH, Circuit Judges.

On October 16, 2007, appellants filed an emergency motion to vacate a stay and, alternatively, motions for preliminary injunction and class certification.

Appellants' emergency motion is denied.

In light of the procedural posture of the district court proceedings, we do not regard this matter as appropriately before this court. *See* 28 U.S.C. § 1292(a)(1).

The district court has not granted, continued, refused, or dissolved a preliminary injunction at this time. *See Carson v. American Brands, Inc.*, 450 U.S. 79, 87 n.12 (1981); *Alsea Valley Alliance v. Department of Commerce*, 358 F.3d 1181, 1186-

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87 (9th Cir. 2004). Accordingly, we remand these proceedings to the district court for review of the parties' pending motions in the first instance.

REMANDED.

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B. FLETCHER, Circuit Judge, concurring:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I concur in the order remanding to the district court. I add this concurrence only to note that the Government assures us that, absent emergency, it will drug deportees only upon court order establishing that the deportee is an imminent danger to himself or those around him. This lessens to some extent the plaintiffs' claim of imminent harm.